IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8423 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NIRANJAN RAMANLAL PARIKH - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR KV SHELAT for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2.
MR RN SHAH for Respondent(s) : 3,
MR SHITAL R PATEL for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/11/2005

ORAL JUDGMENT

In the present petition, the petitioner has made a grievance that though respondent No.4 has encroached on the public land belonging to respondent No.3 Nagarpalika

and made illegal construction thereon, respondent No.3 is not taking prompt appropriate steps for removal of such unauthorized encroachment and construction.

2. In response to the notice issued by this Court, respondent No.4 has appeared through learned advocate Shri Shital Patel. Learned advocate Shri Shital Patel mainly contended that the petitioner himself has not come with clean hands and has made encroachment. Learned advocate Shri Shelat appearing for the petitioner submitted that the encroachment of the petitioner was on a very small extent seeking support for his old wall which the petitioner shall remove forthwith. Learned advocate Shri Shah appearing for respondent No.3 Nagarpalika submitted that despite notice issued to respondent No.4 prohibiting her from carrying out construction in the land not belonging to her, she has continued such construction and the Nagrapalika will proceed against respondent No.4 and the illegal construction carried out by her in accordance with law and with due promptness.

3. In view of the above stand of the Municipality, no further directions are required to be given in favour

of the petitioner. It is clarified that though it was sought to be suggested on behalf of respondent No.4 that there is injunction from Civil Court in Civil Suit No.60/03 filed before the Civil Judge, Junior Division, Dehgam, from the material placed on record, it is clear that the civil suit and the status quo order granted by the civil court is confined to the construction carried out by respondent No.4 in the land belonging to her and there is nothing in the order to suggest that the order of status quo would protect the construction of respondent No.4 in the public land in which admittedly she has made encroachment.

4. With the above observations, the petition is disposed of. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(vjn)